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24 UNITED STATES DISTRICT COURT

25 FOR THE NORTHERN DISTRICT OF CALIFORNIA

JOSE BARRIGA, JESUS TORRES URIBE,
AND JOEL MENDOZA

Plaintiffs,

vs.

PREFERRED PLUMBING, INC.; JAMES
LUIS RUIZ; EMILIO RUIZ; AND
FEDERICO RUIZ

Defendants

Case No.: CV 08 1700 BZ

JOINT CMC STATEMENT

DATE: July 7, 2008
DEPT: G, 15th Floor
TIME: 4:00 p.m.

1 In accordance with the Standing Order for All Judges of the Northern District of
2 California, the parties in this matter hereby submit this Joint Case Management Conference
3 Statement.

4 **1. Jurisdiction and Service**

5
6 The basis for the Court's subject matter jurisdiction over the claims of Plaintiffs JOSE
7 BARRIGA, JESUS TORRES URIBE, AND JOEL MENDOZA ("Plaintiffs") is the Fair Labor
8 Standards Act, 29 U.S.C. §§ 201 *et seq.*, as alleged in the Complaint. There are no existing
9 issues regarding personal jurisdiction or venue. There are no parties that remain to be served.

10
11 **2. Facts**

12 Plaintiffs allege that they were employed by defendants PREFERRED PLUMBING,
13 INC.; JAMES LUIS RUIZ; EMILIO RUIZ; AND FEDERICO RUIZ as on site construction
14 workers in the plumbing trade.

15 In this action, Plaintiffs seek compensation for all hours worked and for the payment of
16 prevailing wages against Defendants under Federal and California law.

17 The principal issues in dispute regarding Plaintiffs' claims are:

18 1. An accounting of the unpaid prevailing wages as Plaintiffs were classified as
19 "laborers" and discharged the duties of plumbers on a prevailing wage project in Menlo Park
20 California;

21 2. The factual adjudication and accounting of "off the clock" preliminary and
22 postliminary compensable labor. Plaintiffs allege that they routinely worked at Defendants'
23 shop, and transported themselves, tools and materials and were not paid until they showed up to
24 the job site and set up to begin a work day. The postliminary work off the clock work involved
25 light clean up and transporting vehicles, tools and excess material back to the shop. There is also

1 a claim that on the Menlo Park prevailing wage project, workers had one hour of their
2 compensable work time reduced;

3 Defendants allege Plaintiffs were employed by defendant PREFERRED PLUMBING,
4 INC. Defendants JAMES LUIS RUIZ, EMILIO RUIZ, and FEDERICO RUIZ are shareholders,
5 directors and officers of defendant PREFERRED PLUMBING, INC., but there is no basis for
6 personal liability for plaintiffs' claims against the corporate employer. As such, there is no legal
7 basis for the inclusion of the RUIZ defendants in this matter.

8 As to plaintiffs' prevailing wage claims, plaintiffs were fully compensated for their work
9 on the subject project. Plaintiffs were very inexperienced workers and did not qualify as
10 "apprentice" plumbers. As such, they were paid at the correct rate. A complaint was filed with
11 the Labor Commissioner, State of California concerning this project. The Labor Commissioner
12 concluded "there is insufficient evidence to confirm California Public Work Law was violated."

13 As to plaintiffs' "off the clock" preliminary and postliminary compensable labor claims,
14 plaintiffs were given the option of transporting themselves to the project in Menlo Park, or
15 meeting at defendant's shop and getting a ride to work. All materials for the project were
16 delivered directly to the job site by the vendor so plaintiffs' claims that they loaded materials on
17 the way to the jobsite is incorrect.

18 In sum, defendants' allege plaintiffs were paid in full the prevailing wages due them.

19
20 **3. Legal Issues**

21 Plaintiffs assert the following:

22 1. That Defendants failed to pay overtime pay in violation of California Labor Code
23 §§ 501 and 1194 as well as in violation of the Fair Labor Standards Act, 29 U.S.C. §§ 201 *et seq.*
24 This includes also includes "off the clock" wages for preliminary and postliminary work which
25 increase the number of hours worked, compensable wages, and overtime amounts.;

2. That Defendants failed to pay Plaintiffs their wages upon termination in violation of California Labor Code § 201 which subject them to waiting time penalties under Labor Code § 203.

3. That Defendants must pay liquidated damages to Plaintiffs under the FLSA;

4. That Defendants seek State Prevailing Wages for work performed on at least 6 known Public Works construction projects and as third party beneficiaries to a contract that called for Prevailing Wages or by operation of law, California Labor Code §§ 1771, et seq.

For the reasons set forth in Section 2 above, Defendants dispute plaintiffs are owed any amount. Plaintiffs were paid in full the correct prevailing wages and are not entitled to any additional compensation.

4. Motions

There have been no prior motions in this action and none are pending. The parties anticipate filing the following motions:

(a) Plaintiff's Summary Judgment Motion for on their accounting after conducting factual investigation;

(d) Defendants' Summary Judgment Motion on all of plaintiffs' wage claims.

5. Amendment of Pleadings

No amendments are anticipated at this time.

6. Evidence Preservation

The parties have been notified to preserve all relevant evidence, including electronically stored evidence and will take steps to do so.

/ / /

1 **7. Disclosures**

2 The parties have agreed to serve their respective initial disclosures no later than July 29,
3 2008.

4
5 **8. Discovery**

6 No discovery has been taken to date. The parties agree to the following discovery and
7 case management schedule:

8 (a) Deadline to complete fact discovery: December 30, 2008.

9 (b) Deadline for expert disclosure statements under Fed. R. Civ. P. 26: January 30,
10 2009.

11 (d) Deadline to conduct expert discovery: March 28, 2009.

12 (e) Last day for hearing dispositive motions to be filed: April 28, 2008.

13 The parties wish to reserve the ability to seek an acceleration (or an extension) of the above-
14 proposed schedule.

15
16 **9. Related Cases**

17
18 There are no related cases or proceedings pending before another Judge of this Court or
19 before another Court or administrative body.

20
21 **10. Relief**

22 At this point, Plaintiff does not have sufficient records to estimate the damages.
23
24
25

1 **11. Settlement and ADR**

2 The parties are willing to participate to participate in the Court's ADR program and will
3 file a stipulation.

4
5 **12. Consent To Magistrate Judge For All Purposes**

6 The parties have filed their consent to have a Magistrate Judge to conduct all further
7 proceedings in this matter.

8
9 **13. Other References**

10 The parties agree that this case is not suitable for reference to binding arbitration or any
11 other reference.

12
13 **14. Narrowing Of Issues**

14 Neither Plaintiff nor defendants expect to be able to narrow the issues.

15
16 **15. Expedited Schedule**

17 The parties do not believe that this is the type of case that can be handled on an expedited
18 basis with streamlined procedures.

19
20 **16. Trial**

21 The parties are willing to have a Court trial to expedite the adjudication. The expected
22 length of trial is 3 court days.

23
24 **17. Disclosure of Non-Party Interested Entities or Persons**

25 Neither plaintiffs nor defendants have anyone to disclose other than parties themselves.

1 **18. Other Matters**

2 None.

3
4 Respectfully submitted,

5
6
7 Dated: June 30, 2008

By: /s/ RICHARD H. WILSON
 RICHARD H. WILSON
 Attorneys for Plaintiffs

8
9
10 Dated: June 30, 2008

By: /s/ ARI J. LAUER
 ARI J. LAUER
 Attorney for Defendants